

United States
Circuit Court of Appeals⁷
For the Ninth Circuit.

NEW AMSTERDAM CASUALTY COMPANY, a
Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Southern Division.

FILED

NOV 17 1928

PAUL P. O'BRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Alias Writ of Scire Facias.....	10
Assignments of Error.....	27
Certificate of Clerk U. S. District Court to Transcript of Record.....	33
Citation on Appeal.....	34
Engrossed Bill of Exceptions.....	24

EXHIBITS:

Exhibit "A" Attached to Writ of Scire Facias—Bond	7
Exhibit "A" Attached to Alias Writ of Scire Facias—Bond	12
Judgment Absolute on Scire Facias.....	20
Minutes of Court—December 17, 1927—Order Continuing Motion for Forfeiture of Bonds	3
Minutes of Court—December 22, 1927—Order Forfeiting Bonds, etc.	4
Minutes of Court—March 27, 1928—Order for Writ of Scire Facias.....	5
Minutes of Court—May 5, 1928—Order Con- tinuing Hearing on Writ of Scire Facias to May 14, 1928.....	16

Index.	Page
Minutes of Court—May 14, 1928—Order Continuing Hearing on Writ of Scire Facias to May 24, 1928.....	16
Minutes of Court—May 24, 1928—Order Continuing Hearing on Writ of Scire Facias to August 6, 1928.....	17
Minutes of Court—August 6, 1928—Order Continuing Hearing on Writ of Scire Facias to August 11, 1928.....	18
Minutes of Court — August 11, 1928 — Order Continuing Hearing on Writs of Scire Facias in Three Cases to September 4, 1928	18
Minutes of Court—September 4, 1928—Order Submitting Return to Writ of Scire Facias	19
Minutes of Court—September 5, 1928—Order for Judgment Absolute.....	20
Names and Addresses of Attorneys of Record	1
Order Allowing Appeal.....	28
Order Continuing Hearing on Writ of Scire Facias to May 14, 1928.....	16
Order Continuing Hearing on Writ of Scire Facias to May 24, 1928.....	16
Order Continuing Hearing on Writs of Scire Facias in Three Cases to September 4, 1928	18
Order Continuing Jurisdiction of Court to Settle Bill of Exceptions on Appeal.....	23
Order Continuing Hearing on Writ of Scire Facias to August 6, 1928.....	17
Order Continuing Hearing on Writ of Scire Facias to August 11, 1928.....	18
Order Continuing Motion for Forfeiture of Bonds	3

Index.

Page

Order Extending Time to and Including October 5, 1928, to Prepare and File Bill of Exceptions	22
Order Extending Time to and Including November 2, 1928, for Transmittal of Record on Appeal and Docketing Cause.....	23
Order Forfeiting Bonds, etc.	4
Order for Judgment Absolute.....	20
Order for Writ of Scire Facias.....	5
Order Submitting Return to Writ of Scire Facias	19
Petition for Appeal.....	26
Praeceptum for Alias Writ of Scire Facias.....	10
Praeceptum for Transcript of Record.....	1
Stipulation Re Bill of Exceptions.....	21
Supersedeas Bond	29
Writ of Scire Facias.....	5

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For New Amsterdam Casualty Company, Appel-
lant:

KNIGHT, BOLAND & CHRISTIN, Esqs.,
F. ELDRED BOLAND, Esq., and F. J.
KILMARTIN, Esq.

For United States, Appellee:

U. S. ATTORNEY, San Francisco, Calif.

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Second Division.

No. 18,827.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH J. PARENTE and NEW AMSTER-
DAM CASUALTY COMPANY, a Corpora-
tion,

Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Please make up the record on appeal heretofore
sued out and include therein:

Writ of scire facias.

Praecipe for alias writ of scire facias.

Alias writ of scire facias.

Minute orders continuing writ of scire facias for hearing.

Minute orders of September 4 and 5, 1928.

Minute orders of December 17 and 22, 1927, and March 27, 1928.

Judgment absolute.

Stipulation extending time for preparation of bill of exceptions. [1*]

Orders extending time to prepare bill of exceptions.

Order continuing jurisdiction to settle bill of exceptions.

Order extending time to docket cause on appeal.

Petition on appeal.

Assignments of error.

Citation on appeal.

Order allowing appeal.

Bond on appeal.

Bill of exceptions.

This praecipe.

Dated: October 26th, 1928.

F. ELDRED BOLAND,

F. J. KILMARTIN,

Attorneys for Defendant New Amsterdam Casualty Company.

Receipt of a copy of the within praecipe is hereby admitted this — day of October, 1928.

GEO. J. HATFIELD,

Attorney for Plaintiff.

[Endorsed]: Filed Oct. 26, 1928. [2]

*Page-number appearing at the foot of page of original certified Transcript of Record.

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 17th day of December, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—DECEMBER 17, 1927—
ORDER CONTINUING MOTION FOR FORFEITURE OF BONDS.

On motion of E. E. Williams, Esq., Asst. U. S. Atty., the Court ordered trial as to defendant Joe Parente be set for Dec. 19, 1927. This case came on regularly for trial as to defendant Fred Marino et al., and after hearing attorneys, the Court ordered said matter be dropped from calendar and placed on reserve calendar of this Court, and that hearing of the motion of Geo. J. Hatfield, Esq., U. S. Atty., for order forfeiting bonds for appearance of defendant Joe Parente be continued to January 4, 1928. [3]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County at San Francisco, on Thursday, the 22d day of December, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—DECEMBER 22, 1927—
ORDER FORFEITING BONDS, ETC.

This case came on regularly for trial. Counsel for defendants being present, Geo. J. Hatfield, Esq., U. S. Atty., moved that defendant Joe Parente be called and that the order heretofore entered continuing case to January 4, 1928, be vacated, to which motion and order T. J. Riordan, Esq., attorney on behalf of said defendant, objected to such procedure and moved for continuance of trial of this case. Court ordered objection overruled and said order continuing case to January 4, 1928, be and same is hereby vacated, and ordered that the motion for continuance of trial be and is hereby denied, to which orders exceptions be entered.

Further ordered that defendant Joe Parente be called, and being called and failing to answer, on motion of Mr. Hatfield, the Court ordered that the bonds heretofore given for appearance of said

defendant Joe Parente herein be and the same are hereby forfeited unto the United States of America.
[4]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 27th day of March, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 27, 1928—
ORDER FOR WRIT OF SCIRE FACIAS.

On motion of W. A. O'Brien, Esq., Assistant United States Attorney, IT IS ORDERED that a writ of scire facias issue directed to the sureties on the bond of Joe Parente. [5]

[Title of Court and Cause.]

WRIT OF SCIRE FACIAS.

The President of the United States of America,
To the Marshal of the United States of America for the Northern District of California, GREETING:

WHEREAS, on the 5th day of July, A. D. 1927, Joseph Parente, as principal, and New Amsterdam

Casualty Company (a Corporation), as surety, came before Thomas E. Hayden, a United States Commissioner at San Francisco, California, and then and there, as such principal and surety, acknowledged themselves to be jointly and severally bound to the United States in the sum of Twenty Thousand Dollars (\$20,000.00), under and through that certain recognizance of which a full and true copy is annexed hereto and made part hereof and marked Exhibit "A"; and

WHEREAS, afterwards, to wit, on the 19th day of December, 1927, the said principal was regularly required to answer the criminal charge specifically mentioned in said Exhibit "A," but answered not and did not appear, and his said surety, being then regularly required to produce him, produced him not, and breached the condition of said recognizance; and

WHEREAS, on the 19th day of December, 1927, by reason of the premises hereinabove, the said recognizance was forfeited to the United States:

WHEREFORE, on motion of the United States Attorney for the Northern District of California, and good cause appearing therefor, it is considered and adjudged that the United States have and recover the said sum of Twenty Thousand Dollars (\$20,000.00) of and from the said principal and the said surety, jointly and severally, together with costs herein; and

WE THEREFORE COMMAND YOU that you make known to the said principal and to the same surety that they are required to be before our

United States District Court, Northern District of [6] California, Southern Division, at a court to be holden on the 16th day of April, 1928, at 10 A. M., at the Post Office Building in San Francisco, California, then and there to show cause, if any they have, why judgment upon the said recognizance, forfeited as aforesaid, should not be made absolute and execution issue thereon.

And have you then and there this writ, with your return thereon endorsed; and herein fail not.

WITNESS, the Honorable A. F. ST. SURE, Judge of the District Court of the United States, Northern District of California, this 27th day of March, A. D. 1928, and of our Independence the 152d.

ATTEST my hand and the seal of said District Court the day and year last above written.

[Seal]

WALTER B. MALING,
Clerk.

By M. E. Van Buren,
Deputy Clerk. [7]

EXHIBIT "A."

United States of America,
Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, That we, JOE PARENTE, as principal, and NEW AMSTERDAM CASUALTY COMPANY and, as sureties, are held and firmly bound unto the United States of America, in the sum of TWENTY THOUSAND DOLLARS (\$20000) Dollars, to be paid to the said United States of

America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

SEALED with our seals and dated the 5th day of July, in the year of our Lord one thousand nine hundred and twenty seven:

THE CONDITION of the above recognizance is such, that, whereas, an Indictment has been found by the United States Grand Jury for the Southern Division of the Northern District of California, and filed on the 28th day of June, A. D. 1927, in the Southern Division of the United States District Court for the Northern District of California, charging the said Joe Parente with Viol. Act October 28, 1919 (National Prohibition Act) committed on or about the day of, A. D. 192. . . ., to wit, at the District and Division aforesaid.

AND WHEREAS, the said Joe Parente has been required to give a recognizance, with sureties, in the sum of Twenty Thousand Dollars (\$20000) *Dollars* for his appearance before said United States District Court whenever required. [8]

NOW, THEREFORE, if the said Joe Parente shall personally appear at the Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the courtroom of said Court in the City and County of San Francisco, on the 14th day of July, A. D. 1927, at ten o'clock in the forenoon of that day, and afterwards whenever or wherever he may

be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained, and if convicted shall appear for judgment and render himself in execution thereof, then this recognizance shall be void; otherwise, to remain in full effect and virtue.

JOE PARENTE. (Seal)

Address: 731-14th Ave.

NEW AMSTERDAM CASUALTY CO. (Seal.)

By GEO. W. POULTNEY, (Seal)

Atty.-in-fact.

Acknowledged before me and APPROVED the day and year first above written.

[Seal]

THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California, at San Francisco.

Name and Address of Attorney for Defendant:

THOS. J. RIORDAN. Address: Hobart Bldg.

[9]

U. S. MARSHAL'S RETURN.

I hereby certify and return that I received the within writ on the 29th of March, 1928, and herewith return the same unexecuted, for the reason that service of same was held up at the request of the U. S. Attorney, who was awaiting instructions from the Attorney General relative to service of

same, and further that the return date of April 16, 1928, has now expired.

FRED L. ESOLA,
U. S. Marshal.

By John A. Roseen,
Deputy.

April 18, 1928, San Francisco, Calif.

[Endorsed]: Filed Apr. 18, 1928. [10]

[Title of Court and Cause.]

PRAECIPE FOR ALIAS WRIT OF SCIRE FACIAS.

To the Clerk of Said Court:

Sir: Please issue alias writ of scire facias.

GEO. J. HATFIELD,
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 20, 1928. [11]

[Title of Court and Cause.]

ALIAS WRIT OF SCIRE FACIAS.

The President of the United States of America,
To the Marshal of the United States of
America for the Northern District of California, GREETING:

WHEREAS, on the 5th day of July, A. D. 1927, Joseph Parente, as principal, and New Amsterdam Casualty Company (a corporation), as surety, came

before Thomas E. Hayden, a United States Commissioner at San Francisco, California, and then and there, as such principal and surety, acknowledged themselves to be jointly and severally bound to the United States in the sum of Twenty Thousand Dollars (\$20,000.00), under and through that certain recognizance of which a full and true copy is annexed hereto and made part hereof and marked Exhibit "A"; and

WHEREAS, afterwards, to wit, on the 19th day of December, 1927, the said principal was regularly required to answer the criminal charge specifically mentioned in said Exhibit "A," but answered not and did not appear, and his said surety, being then regularly required to produce him, produced him not, and breached the condition of said recognizance; and

WHEREAS, on the 19th day of — December, 1927, by reason of the premises hereinabove, the said recognizance was forfeited to the United States:

WHEREFORE, on motion of the United States Attorney for the Northern District of California, and good cause appearing therefor, it is considered and adjudged that the United States have and recover the said sum of Twenty Thousand Dollars (\$20,000.00) of and from the said principal and the said surety, jointly and severally, together with costs herein; and

WE THEREFORE COMMAND YOU as before you were commanded that you make known to the said principal and to the same surety that they are required to be before our United States District

Court, Northern District of [12] California, Southern Division; at a court to be holden on the 5th day of May, 1928, at 10 A. M. at the Post Office Building in San Francisco, California, then and there to show cause, if any they have, why judgment upon the said recognizance, forfeited as aforesaid, should not be made absolute and execution issue thereon.

And have you then and there this writ, with your return thereon endorsed; and herein fail not.

WITNESS, the Honorable A. F. ST. SURE, Judge of the District Court of the United States, Northern District of California, this 20th day of April, A. D. 1928, and of our Independence the 152d.

ATTEST my hand and the seal of said District Court the day and year last above written.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [13]

EXHIBIT "A."

United States of America,
Northern District of California,—ss.

KNOW ALL MEN BY THESE PRESENTS, That we, JOE PARENTE, as principal, and NEW AMSTERDAM CASUALTY COMPANY and, as Sureties, are held and firmly bound unto the United States of America, in the sum of TWENTY THOUSAND DOLLARS (\$20,000) Dollars, to be paid to the said United States of

America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

SEALED with our seals and dated the 5th day of July, in the year of our Lord one thousand nine hundred and twenty-seven.

THE CONDITION of the above recognizance is such, that, whereas, an Indictment has been found by the United States Grand Jury for the Southern Division of the Northern District of California, and filed on the 28th day of June, A. D. 1927, in the Southern Division of the United States District Court for the Northern District of California, charging the said Joe Parente with Viol. Act October 28, 1919 (National Prohibition Act) committed on or about the day of, A. D. 192. . . ., to wit, at the District and Division aforesaid.

AND WHEREAS, the said Joe Parente has been required to give a recognizance, with sureties, in the sum of Twenty Thousand Dollars (\$20,000) *Dollars* for his appearance before said United States District Court whenever required. [14]

NOW, THEREFORE, If the said Joe Parente shall personally appear at the Southern Division of the United States District Court for the Northern District of California, First Division, to be holden at the Courtroom of said court in the City and County of San Francisco, on the 14th day of July, A. D. 1927, at ten o'clock in the forenoon of that day, and afterwards whenever or wherever he may

be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said court without leave first obtained, and if convicted shall appear for judgment and render himself in execution thereof, then this recognizance shall be void; otherwise, to remain in full effect and virtue.

JOE PARENTE. (Seal)

Address: 731-14th Ave.

NEW AMSTERDAM CASUALTY CO. (Seal)

By GEO. W. POULTNEY, (Seal)

Atty-in-fact.

Acknowledged before me and APPROVED the day and year first above written.

[Seal] THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California, at San Francisco.

Name and Address of Attorney for Defendant:

THOS. J. RIORDAN. Address: Hobart Bldg.

[Endorsed]: Filed Apr. 28, 1928. [15]

U. S. MARSHAL'S RETURN.

18,827.

Northern District of California,—ss.

I hereby certify and return that on the 25 day of April, 1928, I received the within alias writ of scire facias and that after diligent search I am

unable to find the within named defendants Joe Parente within my district.

FRED L. ESOLA,
United States Marshal.
By WM. J. O'FARRELL,
Deputy United States Marshal.

RETURN ON SERVICE OF WRIT.

18,827.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed alias writ of scire facias on the therein named New Amsterdam Casualty Company, a corporation, by handing to and leaving a true and correct copy thereof with Walter W. Derr, resident vice-president, personally, at San Francisco, in said District, on the 25 day of April, A. D. 1928.

FRED L. ESOLA,
U. S. Marshal.
By WM. J. O'FARRELL,
Deputy. [16]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 5th day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 5, 1928—ORDER
CONTINUING HEARING ON WRIT OF
SCIRE FACIAS TO MAY 14, 1928.

This day being the day for the return on the writ of scire facias issued herein, F. E. Boland, Esq., appeared as attorney for the New Amsterdam Casualty Company. After hearing Mr. Boland, IT IS ORDERED that this matter be continued to May 14, 1928, to which order E. R. Bonsall, Esq., Asst. U. S. Atty., then and there duly excepted. [17]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 14th day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 14, 1928—ORDER
CONTINUING HEARING ON WRIT OF
SCIRE FACIAS TO MAY 24, 1928.

Continued to May 24, 1928, for hearing on return to writ, etc. [18]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 24th day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 24, 1928—ORDER
CONTINUING HEARING ON WRIT OF
SCIRE FACIAS TO AUGUST 6, 1928.

Continued to Aug. 6, 1928, for hearing on return to writ, etc. [19]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 6th day of August, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—AUGUST 6, 1928—ORDER CONTINUING HEARING ON WRIT OF SCIRE FACIAS TO AUGUST 11, 1928.

After hearing attorneys, case continued to Aug. 11, 1928, for hearing on return to writ, etc. [20]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 11th day of August, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable WILLIAM H. HUNT, Judge.

[Title of Cause.]

MINUTES OF COURT—AUGUST 11, 1928—ORDER CONTINUING HEARING ON WRITS OF SCIRE FACIAS IN THREE CASES TO SEPTEMBER 4, 1928.

ORDERED that the matter of the returns to writ of scire facias, in the three above-entitled cases, be and the same are hereby continued to Sept. 4, 1928, for hearing. [21]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 4th day of September, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 4, 1928
—ORDER SUBMITTING RETURN TO
WRIT OF SCIRE FACIAS.

After hearing F. E. Boland, Esq., attorney for surety, and Geo. M. Naus, Esq., Asst. U. S. Atty., the Court ordered that the return to writ, etc., be and same is hereby submitted. [22]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 5th day of September, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 5, 1928
—ORDER FOR JUDGMENT ABSOLUTE.

IT IS ORDERED that the petition for remission, under Section 1020, R. S., heretofore submitted be and the same is hereby denied and that a judgment *nisi* for the forfeiture of the bond given for the appearance of defendant Joseph J. Parente be entered and made absolute. [23]

In the Southern Division of the United States District Court for the Northern District of California.

No. 18,827.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH PARENTE et al.,
Defendants.

JUDGMENT ABSOLUTE ON SCIRE FACIAS.

A writ of scire facias having heretofore been regularly issued in this cause, requiring the persons hereinafter in this judgment specifically named to show cause, if any they had, why the judgment *nisi* heretofore rendered should not be made absolute, upon the recognizance specifically described in the said writ, and the matter now being regularly

before this Court for judgment, and none of said persons having shown cause,—

IT IS CONSIDERED AND ADJUDGED that the said judgment *nisi* be and it hereby is made absolute, and that execution issue thereon, in the sum of \$20,000.00, with costs taxed in the sum of \$——, in favor of the United States of America, to make the said sums out of the property of Joseph Parente and New Amsterdam Casualty Company, a corporation.

Done in open court this 6th day of September, 1928.

FRANK H. KERRIGAN,
Judge.

[Endorsed]: Filed Sep. 6, 1928.

Entered in Vol. 23, Judg. and Decrees, at Page 202. [24]

[Title of Court and Cause.]

STIPULATION RE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED by and between the above-named plaintiff and the defendant New Amsterdam Casualty Company, a corporation, that the defendant New Amsterdam Casualty Company may have to and including the first day of October, 1928, within which to prepare its proposed bill of exceptions for use on appeal from the judgment which has been heretofore entered herein.

Dated: September 13, 1928.

GEO. J. HATFIELD,
U. S. Atty.,

GEO. M. NAUS,
Asst. U. S. Atty.,
Attorneys for Plaintiff.

KNIGHT, BOLAND & CHRISTIN,
Attorneys for New Amsterdam Casualty Com-
pany.

[Endorsed]: Filed Sep. 20, 1928. [25]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND IN-
CLUDING OCTOBER 5, 1928, TO PRE-
PARE AND FILE BILL OF EXCEP-
TIONS.

GOOD CAUSE APPEARING THEREFOR,
IT IS HEREBY ORDERED that the defendant
and appellant, New Amsterdam Casualty Company,
a corporation, may have to and including the 5th
day of October, 1928, within which to prepare its
proposed bill of exceptions for use on appeal from
the judgment which has been heretofore entered
herein.

Dated: September 29th, 1928.

FRANK H. KERRIGAN,
Judge.

[Endorsed]: Filed Sep. 29, 1928. [26]

[Title of Court and Cause.]

ORDER CONTINUING JURISDICTION OF
COURT TO SETTLE BILL OF EXCEP-
TIONS ON APPEAL.

GOOD CAUSE APPEARING THEREFOR,
IT IS HEREBY ORDERED that the jurisdiction
of this Court to act upon and settle the bill of ex-
ceptions on appeal of defendant New Amsterdam
Casualty Company, a corporation, is hereby con-
tinued from the present term to and including the
next ensuing full term, to wit, the November, 1928,
term of said court.

Dated: San Francisco, California, October 1,
1928.

FRANK KERRIGAN,
United States District Judge.

[Endorsed]: Filed Oct. 2, 1928. [27]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND IN-
CLUDING NOVEMBER 2, 1928, FOR
TRANSMITTAL OF RECORD ON AP-
PEAL AND DOCKETING CAUSE.

GOOD CAUSE APPEARING THEREFOR,
IT IS HEREBY ORDERED that the time within
which the record on appeal shall be transmitted
by the Clerk of the District Court to the Circuit
Court of Appeals and the cause docketed therein

is hereby extended to and including the 2d day of November, 1928.

FRANK H. KERRIGAN,
Judge of the U. S. District Court.

[Endorsed]: Filed Oct. 24, 1928. [28]

[Title of Court and Cause.]

ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore, to wit, on the 4th day of September, 1928, the return to the writ of scire facias came on for hearing before the Honorable Frank H. Kerrigan, one of the Judges of the above-entitled court, sitting without a jury; plaintiff appearing by George J. Hatfield and G. M. Naus, its attorneys, and the defendant, New Amsterdam Casualty Company, appearing by F. Eldred Boland, its attorney, and defendant Joseph J. Parente not appearing in person or by attorney.

Thereupon, the following proceedings took place:

Mr. Boland, in open court, served upon the United States Attorney, a petition in behalf of New Amsterdam Casualty Company for remission of forfeiture, and filed it with the Clerk, and stated to the Court that said New Amsterdam Casualty Company had filed in the proceeding its answer to the writ of scire facias and asked the Court that [29] the matter be set down for a date certain for trial.

Thereupon, Mr. Naus, Assistant United States Attorney, moved on behalf of plaintiff, first, that in the scire facias proceedings the judgment *nisi* be made absolute upon the face of the writ and return upon the ground that the return did not deny the matters of record upon which the writ was based, and the affirmative matter in the return was insufficient in substance to state any defense; and secondly, that the petition for remission, being necessarily founded upon Section 1020 of the Revised Statutes, was necessarily bad and insufficient in that it affirmatively showed a wilful default of the party within the meaning of said Section 1020.

Mr. Boland asked that the petition of New Amsterdam Casualty Company for remission of forfeiture be set for a date certain for hearing, in order that it might formally present the petition with appropriate evidence.

Thereupon, the Court asked Mr. Boland the points of defense to the writ of scire facias, and the grounds of the petition for remission of forfeiture, and thereupon argument took place between counsel, at the conclusion of which the Court ordered the matter submitted; and after consideration it was ordered that the petition for remission be denied, and that the judgment *nisi* be made absolute; and exceptions were taken to both rulings.

No evidence, oral or documentary, was submitted.

Dated: October 26th, 1928.

FRANK H. KERRIGAN,
United States District Judge. [30]

IT IS HEREBY STIPULATED that the foregoing bill of exceptions is correct.

GEO. J. HATFIELD,
United States Attorney.

GEO. M. NAUS,
Assistant United States Attorney.

F. ELDRED BOLAND,

F. J. KILMARTIN,

Attorneys for Defendant New Amsterdam Casualty
Company.

[Endorsed]: Filed Oct. 26, 1928. [31]

[Title of Court and Cause.]

PETITION FOR APPEAL.

The New Amsterdam Casualty Company, a corporation, one of the defendants in the above-entitled action, feeling itself aggrieved by the decision of the Court granting to plaintiff judgment as prayed for in its writ of scire facias, and by the judgment of the Court entered herein on the 6th day of September, 1928, wherein it was and is ordered, adjudged and decreed that said plaintiff recover of and from said defendant the New Amsterdam Casualty Company, the sum of Twenty Thousand (\$20,000) Dollars and costs; and feeling itself aggrieved for that in and by said decision and judgment and for that in said action certain errors were committed to the prejudice of said defendant, all of which will more in detail appear from the as-

signment of errors which defendant has filed with this petition,

COMES NOW by Messrs. F. Eldred Boland and F. J. Kilmartin, its attorneys, and petitions said Court for an order allowing said defendant to prosecute an appeal to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that [32] behalf made and provided; and also that an order be made fixing the amount of security which the said defendant shall furnish upon said appeal, and also that a transcript of the record, proceedings and papers in this action, duly authenticated, may be sent to said Circuit Court of Appeals for the Ninth Circuit, and that all further proceedings be suspended, stayed and superseded until the determination of said appeal by said Circuit Court of Appeals.

And your petitioner will ever pray, etc.

F. ELDRED BOLAND,

F. J. KILMARTIN,

Attorneys for Defendant New Amsterdam Casualty
Company.

[Endorsed]: Filed Sep. 27, 1928. [33]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now defendant New Amsterdam Casualty Company and files the following assignments of error upon which it will rely on its prosecution of

its appeal in the above-entitled cause from the decree made by this Honorable Court on the 6th day of September, 1928.

1. That the United States District Court for the Southern Division of the Northern District of California erred in granting judgment for the plaintiff and respondent.

2. That said Court erred in refusing to grant judgment for the defendant and appellant.

3. That said Court had no jurisdiction to make said judgment.

4. That said Court erred in giving judgment for plaintiff without a trial of the case.

WHEREFORE appellant prays that said judgment be reversed and that the United States District Court for the Northern District of California, Southern Division, be ordered to enter a [34] judgment and order reversing said decision in said cause.

F. ELDRED BOLAND,

F. J. KILMARTIN,

Attorneys Defendant New Amsterdam Casualty Company.

[Endorsed]: Filed Sep. 27, 1928. [35]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon motion of F. Eldred Boland, Esq., attorney for the above-named petitioner and defendant New

Amsterdam Casualty Company, and upon filing a petition for appeal,—

IT IS ORDERED that an appeal be and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment entered herein on the 6th day of September, 1928, in favor of plaintiff and against defendant the New Amsterdam Casualty Company, and that the amount of bond on said writ of error be and the same is hereby fixed at \$250.00.

Dated: September 27th, 1928.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed Sep. 27, 1928. [36]

[Title of Court and Cause.]

SUPERSEDEAS BOND.

KNOW ALL MEN BY THESE PRESENTS: That the New Amsterdam Casualty Company, a corporation, as principal, and the American Surety Company of New York, a corporation, as surety, are held and firmly bound unto the above-named plaintiff, United States of America, in the sum of Twenty-five Thousand (\$25,000) Dollars, lawful money of the United States, to be paid to the said United States of America, and for payment of which well and truly to be made the said principal and the said surety bind themselves and each of them, and respectively their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of September, 1928.

WHEREAS, the principal herein, being one of the defendants in the above-entitled action, being about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, from the judgment entered in the above-entitled action in [37] the Southern Division of the United States District Court for the Northern District of California, Second Division, on the 6th day of September, 1928, in favor of said United States of America and against New Amsterdam Casualty Company, a corporation,—

NOW, THEREFORE, the condition of this obligation is such that if the above-bounden principal shall prosecute its said appeal to effect and answer all damages and costs if it fails to make said appeal good, and if said judgment shall be affirmed by said Circuit Court of Appeals and shall be complied with in all respects by the said defendant herein New Amsterdam Casualty Company, a corporation, or if said judgment shall be affirmed in part or modified by said Circuit Court of Appeals and shall be complied with in all respects by said defendant as so affirmed in part or modified, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

IT IS EXPRESSLY AGREED by the surety hereto that in case of the breach of any condition hereof the above-entitled court may, upon notice to said surety of not less than ten days, proceed

summarily in the above-entitled action to ascertain the amount said surety is bound to pay on account of such breach and render judgment therefor against it and award execution thereof.

IN WITNESS WHEREOF the undersigned, the New Amsterdam Casualty Company, a corporation, as principal, and the undersigned American Surety Company of New York, a corporation, as surety, have caused their corporate names and seals to be hereunto affixed by their respective attorneys-in-fact [38] thereunto duly authorized this 19th day of September, 1928.

NEW AMSTERDAM CASUALTY COMPANY, a Corporation,

By WALTER W. DERR, (Seal)

Its Attorney-in-fact,
Principal.

AMERICAN SURETY COMPANY OF NEW YORK, a Corporation,

By R. D. WELDON,
Resident Vice-President.

[Seal]

Attest: B. DUCRAY,
Resident Assistant Secretary.

Approved:

FRANK H. KERRIGAN,
United States District Judge. [39]

State of California,

City and County of San Francisco,—ss.

On this 27th day of September, in the year of our Lord one thousand nine hundred and twenty-eight, before me, Frank L. Owen, a notary public in and for said city and county and state, residing therein,

duly commissioned and sworn, personally appeared Walter W. Derr, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of New Amsterdam Casualty Company, and acknowledged to me that he subscribed the name of New Amsterdam Casualty Company thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the city and county and state aforesaid, the day and year in this certificate first above written.

[Seal] FRANK L. OWEN,
Notary Public in and for said City and County of
San Francisco, State of California.

State of California,
City and County of San Francisco,—ss.

On this nineteenth day of September, in the year one thousand nine hundred and twenty-eight, before me, John McCallan, a notary public in and for said city and county, state aforesaid, residing therein, duly commissioned and sworn, personally appeared R. D. Weldon and B. Ducray, known to me to be the resident vice-president and resident assistant secretary respectively of the [40] American Surety Company of New York, the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of November, A. D. 1928.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [42]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States to United States of America, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the Clerk's office of the United States District Court for the Northern District of California, wherein New Amsterdam Casualty Company, a corporation, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the North-

ern District of California, this 27th day of September, A. D. 1928.

FRANK H. KERRIGAN,
United States District Judge. [43]

Service and receipt of a copy of the within citation is hereby admitted this 27 day of Sept., 1928.

GEO. J. HATFIELD,

For U. S.

[Endorsed]: Filed Sep. 27, 1928. [44]

[Endorsed]: No. 5620. United States Circuit Court of Appeals for the Ninth Circuit. New Amsterdam Casualty Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed November 1, 1928.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

